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April 27, 2004

**VIA HAND DELIVERY**

Ms. Deborah Taylor Tate, Chairman  
TENNESSEE REGULATORY AUTHORITY  
460 James Robertson Parkway  
Nashville, Tennessee 37243

**Re: *Petition of Nashville Gas Company, A Division of Piedmont Natural Gas Company, Inc., for Approval of Negotiated Franchise Agreement With The Metropolitan Government of The City of Nashville and Davidson County, Tennessee Pursuant to TCA § 65-4-107, Docket No. 04-00097.***

Dear Chairman Tate:

Enclosed please find the original and thirteen (13) copies of the Direct Testimony of Thomas G. Cross, to be filed in the above-referenced docket on behalf of our client, Nashville Gas Company, a division of Piedmont Natural Gas Company, Inc.

Should you have any questions concerning the enclosed, please do not hesitate to contact me.

Thanking you in advance for your assistance with this matter, I am

Very truly yours,



R. Dale Grimes

RDG/tn  
Enclosures

cc: J. Richard Collier, Esq. (Via Hand Delivery)  
Karl F. Dean, Esq. (Via Hand Delivery)

IN RE:

PETITION OF NASHVILLE GAS COMPANY,  
A DIVISION OF PIEDMONT NATURAL  
GAS COMPANY, INC. FOR APPROVAL  
OF NEGOTIATED FRANCHISE AGREEMENT  
WITH THE METROPOLITAN GOVERNMENT  
OF THE CITY OF NASHVILLE AND  
DAVIDSON COUNTY, TENNESSEE  
PURSUANT TO TCA § 65-4-107

**THOMAS G. CROSS**

1 **Q. Please state your name and address.**

2 A. My name is Thomas G. Cross and my business address is 225 Polk Avenue, Suite 210,  
3 Nashville, Tennessee.

4 **Q. By whom and in what capacity are you employed?**

5 A. I am employed as an attorney for the Metropolitan Government of Nashville and  
6 Davidson County.

7 **Q. Please describe your educational and professional background.**

8 A. I have a degree in mechanical engineering from Tulane University and a law degree from  
9 Vanderbilt University. I have practiced law in Georgia and Tennessee for a total of 13  
10 years. I have served as a metropolitan attorney for the Metropolitan Government of  
11 Nashville and Davidson County for the last eight years.

12 **Q. What is the purpose of your testimony in this case?**

13 A. The purpose of my testimony is to provide the Tennessee Regulatory Authority with  
14 information relating to the franchise agreement entered into between Nashville Gas  
15 Company ("Nashville Gas") and the Metropolitan Government of Nashville and  
16 Davidson County ("Metropolitan Government") that is before this Authority for approval  
17 in this proceeding.

18 **Q. Could you please explain why approval of the franchise agreement is important to**  
19 **the Metropolitan Government?**

20 A. Yes. From the perspective of the Metropolitan Government it is important that any  
21 utility business operated within the jurisdictional limits of Nashville and Davidson  
22 County be properly authorized by the Metropolitan Government. This authorization is

1 required by T.C.A. §65-26-101 and serves to ensure that utility providers have  
2 appropriate arrangements with the Metropolitan Government to ensure that the provision  
3 of their services will not harm the public interest.

4 **Q. What were the circumstances prompting the negotiation of a new franchise**  
5 **agreement between the Metropolitan Government and Nashville Gas?**

6 A. Nashville Gas, or its predecessors, has been providing gas service to the city of Nashville  
7 since approximately 1911. During that time, the City (and now the Metropolitan  
8 Government) has negotiated a series of franchise agreements with the Company defining  
9 some of the terms and conditions under which this service has been provided. The  
10 existing franchise agreement will expire under its own terms on May 2, 2004. With that  
11 date in mind, in June of last year the Metropolitan Government and the Company started  
12 discussions for the purpose of negotiating a new franchise arrangement.

13 **Q. How did the Metropolitan Government pursue those discussions?**

14 A. In order to ensure that we received sound advice on how to negotiate a new franchise, the  
15 Metropolitan Government retained the New York law firm of Hawkins, Delafield and  
16 Wood. This firm has extensive experience in negotiating municipal natural gas franchise  
17 agreements. Mr. Ron Grosser of that firm represented the interests of the Metropolitan  
18 Government in the ensuing negotiations.

19 **Q. What was the nature of the negotiations?**

20 A. We initially provided the Company with a draft franchise ordinance in the form we  
21 preferred. After reviewing this proposed franchise, Nashville Gas responded with a  
22 variety of concerns and proposed changes (some of which are mentioned in Mr.

1 Cocklin's testimony). After multiple discussions between the Company and Nashville  
2 Gas, and the exchange of a number of offers and counteroffers, the Company and the  
3 Metropolitan Government were ultimately able to reach agreement on the terms  
4 governing a new franchise arrangement to become effective upon the expiration of the  
5 existing franchise on May 2, 2004.

6 **Q. What happened next?**

7 A. Consistent with the procedures governing the grant of utility franchises contained in the  
8 Metropolitan Government's Charter, the agreed terms were put before the Council of the  
9 Metropolitan Government of Nashville and Davidson County in the form of Ordinance  
10 BL2003-36 on October 21, 2003 and approved on a first reading on that date. The  
11 franchise terms were subsequently approved on the second and third readings on  
12 November 18, 2003 and December 2, 2003, respectively, and signed by Mayor Purcell on  
13 December 3, 2003. Nashville Gas then accepted the new franchise on December 11,  
14 2003.

15 **Q. Did this complete the adoption process for the new franchise?**

16 A. No. Following approval by the Metropolitan Council and the Mayor and acceptance by  
17 Nashville Gas, the franchise was put to a vote by the citizens of Nashville and Davidson  
18 County. This vote occurred on February 10, 2004 in conjunction with the Presidential  
19 Primary election. That vote resulted in approval of the new franchise by the citizens of  
20 Nashville and Davidson County by more than a 60% margin.  
21

1 **Q. Do you believe that BL2003-36 is in the public interest and should be approved by**  
2 **the Tennessee Regulatory Authority?**

3 A. Yes. While neither the Metropolitan Government nor the Company received exactly  
4 what they wanted in this franchise, it represents a freely negotiated and comprehensive  
5 resolution of the various parties' interests in this situation. From the perspective of the  
6 Metropolitan Government, it ensures the continuous and uninterrupted provision of high-  
7 quality natural gas service to Nashville and Davidson County by a provider with  
8 substantial experience in providing such service. The new franchise, through its various  
9 provisions, will also help protect the interests of the citizens and residents of Nashville  
10 and Davidson County for the term of the agreement.

11 **Q. What significance do you place on approval of this franchise by the electorate of**  
12 **Nashville and Davidson County?**

13 A. In addition to being required under the terms of the Metropolitan Government Charter, it  
14 is significant that the voters served by the Metropolitan Government have approved the  
15 franchise. The Metropolitan Government is a representatively democratic institution in  
16 which decisions are often taken by elected officials based on their assessment that a  
17 particular action is in the public interest. In this case, that occurred when the  
18 Metropolitan Council passed Ordinance BL2003-36 and Mayor Purcell signed the  
19 Ordinance. As a result of the February 10, 2004 election, however, the citizens that will  
20 be directly impacted by the franchise have also voiced their approval of the franchise by  
21 more than a three-fifth's majority vote.

1 **Q. Does the franchise have any economic significance to the Metropolitan**  
2 **Government?**

3 A. Yes. The franchise payments provided under the franchise are an important source of  
4 revenue to the Metropolitan Government. As is the case with any governmental entity,  
5 the Metropolitan Government engages in a forward looking budget process. In engaging  
6 in this process for 2004 and forward, the Metropolitan Government has included  
7 revenues from the natural gas franchise for Nashville and Davidson County. These  
8 revenues were based on historic levels of franchise payments received from Nashville  
9 Gas, adjusted for various factors, including anticipated growth. As such, the franchise  
10 revenues under BL2003-36, are an important part of the Metropolitan Government's  
11 budget for this year and going forward and will be used to carry out the Metropolitan  
12 Government's business, including the provision of services to the Public.

13 **Q. What is your understanding of the standard to be utilized by the Authority in**  
14 **determining whether to approve Ordinance BL2003-36?**

15 A. Under T.C.A. § 65-4-107, the Authority is authorized to approve the Ordinance if it finds  
16 that it "is necessary and proper for the public convenience and properly conserves the  
17 public interest."

18 **Q. From the perspective of the Metropolitan Government, is the franchise agreement**  
19 **reflected in Ordinance BL2003-36 necessary and proper for the public convenience**  
20 **and in the public interest?**

21 A. Yes. Authority approval of BL2003-36 will mean that the citizens of Nashville and  
22 Davidson County will continue to receive safe and economic natural gas service from

1 Nashville Gas under the substantial protections provided by the franchise. That service  
2 will assist in providing stable infrastructure and increased economic opportunity to  
3 Nashville and Davidson County for the term of the ordinance

4 **Q. Do you have anything further to add to your testimony?**

5 **A.** Not at this time.



### CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been served on the following person(s), via the method(s) indicated, on this the 27 day of April, 2004:

☒ Hand J. Richard Collier, Esq.  
☐ Mail General Counsel  
☐ Facsimile Tennessee Regulatory Authority  
☐ Electronic 460 James Robertson Parkway  
Nashville, TN 37243

☒ Hand Karl F. Dean, Esq.  
☐ Mail Metropolitan Department of Law  
☐ Facsimile 225 Polk Avenue, Suite 210  
☐ Electronic Nashville, TN 37203